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SIPDIS

SENSITIVE

STATE FOR SA/INS
LONDON FOR POL - GURNEY
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E.O. 12958: N/A
TAGS: PHUM MOPS NP
SUBJECT: NEPAL: DETENTIONS AND "DISAPPEARANCES" SINCE THE
END OF THE CEASEFIRE

SUMMARY

¶11. (SBU) Summary: Since the end of the ceasefire between the Government of Nepal (GON) and Maoist insurgents on August 27, it has grown increasingly difficult to obtain information on detainees held as suspected Maoists under special anti-terrorism legislation. Many of these suspects are held incommunicado, unable to contact family members, legal counsel, or human rights organizations. A local human rights NGO estimates that at least 165 individuals have "disappeared" into GON custody in the four months since the end of the ceasefire. Part of the information black-out may be attributed to bureaucratic ineptitude; there appears to be no central registry of detainees held by either the Royal Nepal Army or the police. At the same time, part of the obfuscation appears to be deliberate by members of the security forces fearful of being ordered to release prisoners whose possible links with the insurgents have not been fully investigated. Growing pressure by the international community and domestic human rights organizations may help force greater transparency on the security forces. End summary.

CONSENSUS: WORSE THAN THE EMERGENCY

¶12. (SBU) Since the end of the ceasefire between the Government of Nepal (GON) and Maoist insurgents on August 27, GON security forces have detained an unknown number of individuals as suspected Maoists. Many of these suspects are arrested by plain-clothes members of the security forces (under special anti-terrorist legislation passed in 2002, any member of the three branches of security forces--the Royal Nepal Army (RNA), the Armed Police Force, and the Nepal National Police--may arrest a suspect without a warrant) and are held incommunicado at undisclosed locations. In December Amnesty International put the figure of detainees believed to have thus "disappeared" into GON custody at 110. As of January 12, INSEC, Nepal's largest human rights NGO, estimated the number at 165.

¶13. (SBU) While human rights organizations received some similar complaints during the eight-month state of emergency (November 26, 2001- August 28, 2002), when members of the security forces were given even greater latitude to arrest and detain suspected Maoists, the consensus among most human rights activists is that the situation has worsened significantly in several respects. First, although no statistics are available, anecdotal evidence suggests that the number of house-to-house searches, reportedly often conducted at night by men in plain clothes, has increased dramatically. (Note: Some expatriates in Kathmandu have reported having their homes subjected to such searches. End note.) Individuals who contact human rights organizations to complain that family members are taken away in the course of such searches are often unable to identify the plain-clothes arresting authorities--and thus have no idea where to begin their search.

¶14. (SBU) Second, in a departure from past practice, the Ministries of Defense and Home now regularly withhold information on both the number of detainees held in GON custody and their identities. In contrast, during the state of emergency, despite the restrictions on press and other civil liberties, the GON periodically provided statistics on the total number of detainees held in police custody. Moreover, before the break in the ceasefire, the arresting authorities would usually file a letter seeking the right to hold someone in preventive detention with the Chief District Officer (CDO). Although information on the whereabouts of individual detainees often could be difficult to obtain, lawyers and family members reported some sporadic success in locating and sometimes even visiting prisoners. Since the end of the ceasefire, however, there has been a virtual information blackout on the numbers of detainees held. Lawyers and human rights activists report increased--almost

uniform--difficulty in acquiring information on a detainee's whereabouts or even confirmation that he or she is in GON custody. The security forces' secretiveness helps fuel speculation that the number of detentions has skyrocketed and that the treatment of detainees has deteriorated.

HABEAS CORPUS ONLY RE COURSE

15. (U) Maoist suspects are usually held under the Terrorism and Anti-Destructive Activities Act (TADA), which was passed by Parliament in April 2002. Under TADA, suspects may be held in preventive detention for up to 90 days without charge. The arresting authorities, whether Army, Armed police, or civil police, are required by law to notify the Chief District Officer (CDO), the top-ranking civil servant in a particular district, of the detention. In reality, however, according to officials at the Ministry of Law and Justice and the Attorney General's Office, this requirement is rarely observed. Neither the CDO or the detaining authorities are required by law to inform the family of the detainee's whereabouts or to allow visits by the family or counsel. At the end of 90 days, the arresting authorities are supposed either to file a case against the suspect or release him. In reality, however, according to human rights sources and GON contacts, suspects are often held without charge well past the 90-day limit. Moreover, while TADA permits the RNA to arrest suspects, it does not explicitly authorize the Army to hold them in detention for extended periods. After the stipulated 24 hours, the RNA is supposed to turn over suspects to the civilian authorities. Again, this restriction is rarely observed.

16. (SBU) The only legal recourse available to family members or friends who suspect someone is being detained under TADA is to file a writ of habeas corpus with the Supreme Court. According to the Registrar at the Supreme Court, 200 habeas corpus cases were filed in 2002. In 2003, 552 habeas corpus cases were filed--a jump all the more noteworthy because it coincided in part with the eight-month ceasefire when, presumably, fewer people were being arrested.

In almost all cases, according to Supreme Court Spokesman and Registrar Ram Krishna Timilsena, the Court issues a "show cause" notice to relevant authorities, such as the Home Ministry, Defense Ministry, Police Headquarters, Armed Police Headquarters, and Army Headquarters, asking them to confirm or deny the detention of the subject of the habeas corpus petition. The agencies are required to respond within 15 days. According to Mandira Sharma, Executive Director of the Advocacy Forum, an NGO that provides legal assistance to detainees, in only "two or three cases" over the past year have arresting authorities responded positively to a show cause order, an estimate confirmed by Kedar Prasad Poudel, Secretary of the National Human Rights Commission (NHRC), and

SIPDIS
the Supreme Court Registrar. In most cases, agencies of the security forces either reply in the negative or do not reply at all. "The RNA especially usually keeps quiet," Poudel said, since technically the Army is supposed to turn over detainees to civilian authorities within 24 hours of their arrest. "It is difficult to deal with the military," Timilsena commented, because of its reluctance to acknowledge holding prisoners in detention.

17. (SBU) Arresting authorities will sometimes deny that an individual is in custody even after being presented with evidence of the detention. Sharma of the Advocacy Forum recounted a case in which members of her NGO had encountered a juvenile being held at the Hanuman Dhoka police station in Kathmandu while visiting another detainee. The juvenile told the NGO representatives that he had been in detention for about three months. The NGO informed the juvenile's father and assisted him in filing a writ of habeas corpus. The police responded to the show cause order by denying having the youth in custody. On a subsequent visit to detainees at the Boudhha police station, Advocacy Forum representatives encountered the juvenile again, this time taking pictures of him to prove his presence in police custody. Although the Supreme Court ordered the boy's release on January 2, authorities at Boudhha claimed that he was not in detention at the facility. Sharma said she has since learned the youth has been transferred yet again to a third police station.

INSTITUTIONAL PROBLEMS

18. (SBU) In the absence of confirmation by any GON authority that an individual is being held in detention, virtually all of the nearly 200 Nepalis who have been arrested since the end of the ceasefire could be classified as "disappeared." Part of the problem in verifying the whereabouts of detainees may be attributed to bureaucratic ineptitude. The GON appears to maintain no central registry of detainees against

which a habeas corpus petition may be cross-referenced. Instead, according to RNA and police authorities, the request for information must be sent out to the various brigades, battalions, police headquarters and CDO offices across the country. At the same time, the NHRC, which maintains a list of all "disappearances" reported to it since 2000, has no way of winnowing out from its database people who subsequently resurface. (Note: The GON released an estimated 1200 Maoist suspects during the 2003 ceasefire. The NHRC and other human rights NGOs readily admit that they have not checked the names of those released against the list of "disappeared." End note.) In an effort to weed out from its database those who have since turned up, in December the NHRC published a list of 808 individuals--663 believed to be held in GON custody and the remaining 145 taken by the Maoists--reported missing since 2000, and appealed to the public to share any updates. (In a cursory overview, PolOff noted the names of five individuals who have since been released.) When asked if the effort has proven fruitful thus far, Poudel said that a few people had come forward to verify their releases, but that many more had complained that their relatives' disappearance had not been noted in the original list.

INSTITUTIONAL RESISTANCE

19. (SBU) While bureaucratic unwieldiness may account for part of the problem, institutional resistance to transparency surely accounts for a large share as well. The security forces justify the need for holding large numbers of detainees incommunicado on the potential importance of the information detainees might yield. A mere 24 hours is not sufficient time in which to gain the intelligence needed from detainees, the RNA argues, while the police maintain that 90 days does not allow adequate time to prepare a solid court case against a suspect. According to this logic, the preventive-detention clock does not start ticking until the arresting authority acknowledges the detention. One human rights activist, who successfully pursued a habeas corpus case of a couple who had been in detention for more than three months, reported that police, in responding to the show-cause order, claimed that the couple had been in detention for only one day. Senior military officers with whom we have discussed this problem argue that if the names of those detained are publicized, the Maoist leaders about whom the detainees may have information will be alerted and move successfully to evade capture. For some in the security forces, acknowledging the presence of a detainee is the first step in the detainee's eventual release. The GON's liberality in releasing Maoist suspects--including five Central Committee members--during the last ceasefire reportedly dismayed and demoralized the security forces, especially after a Maoist hit squad assassinated an RNA officer who had been involved in questioning many of those released after the ceasefire broke. Finally, the RNA's lack of legal authority to hold suspects for extended periods presents special problems for the Army in acknowledging the presence of detainees or allowing access to detainees. The ICRC, for example, which enjoys good access to detainees in police custody or in prison, has only limited access to detainees in RNA custody.

INCREASING PRESSURE

10. (SBU) We do not doubt that the GON's improved effectiveness in using intelligence gained from detained Maoists has been at least partly responsible for the security forces' progress in thwarting attacks and capturing Maoist leaders and supporters. It strains credulity, however, to assert that the several hundred suspects now being held incommunicado in various facilities across Nepal are of such key importance to the Maoist movement that acknowledging their detention would jeopardize the GON's counterinsurgency effort. The apparent absence of oversight of such arrests by any civilian authority makes the phenomenon even more worrisome. While it is unclear whether the security forces are actually arresting more people now than during the state of emergency, their secretiveness and general unresponsiveness to inquiries have helped focus international and domestic attention on the issue. The National Human Rights Commission, along with a number of domestic NGOs, has become more active in publicizing the situation and in attempting to find redress. As pressure from the international community mounts, the GON may find it increasingly difficult to rebuff the steady stream of inquiries. We will continue to press the GON to develop a more reliable, more credible institutional mechanism with which to respond to the growing number of queries.

BOGGS